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FEB 03 2005

OFFICE OF PETITIONS

In re Application of :
Nila Patil, David R. Cox, Charit :
Pethiyagoda, Andrew Sparks and : DECISION REFUSING STATUS
Huang-Tsu Chen : UNDER 37 CFR 1.47(a)
Application No. 10/635,175 :
Filed: August 6, 2003
For: METHODS FOR ENRICHING
POPULATIONS OF NUCLEIC ACID SAMPLES

This is in response to the "Petition Under 37 CFR 1.47(a)," filed January 10, 2005 (certificate of mailing date: January 7, 2005).

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on August 6, 2003 without a fully executed oath or declaration and naming Nila Patil, David R. Cox, Charit Pethiyagoda, Andrew Sparks and Huang-Tsu Chen as joint inventors.

Accordingly, on November 8, 2004, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

In response, on January 10, 2005 (certificate of mailing date: January 7, 2005), the instant petition was filed.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks items (1), as set forth above.

As to item (1), applicant failed to show or provide proof that the inventor has refused to sign the declaration. Applicant has stated that calls were placed to non-signing inventor Chen's home telephone number. Applicant states a return call and message were made by non-signing inventor Chen but that a return call to non-signing inventor Chen thereafter elicited a response that it was a wrong number. As such, applicant has not shown that an express oral refusal to sign the declaration has been made.

Applicant may wish to send a copy of the application papers to the non-signing inventor at the non-signing inventor's last known address to show that it was presented to the non-signing inventor, but that he did not respond to, or refused, the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

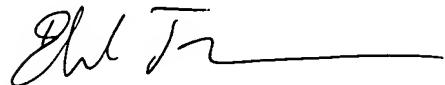
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
Box 1450
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By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3228.



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